No. 06-686

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In The
Supreme Court of the United States

LUCKY I. IROMUANYA,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Nebraska

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

JON BRUNING
Nebraska Attorney General

JAMES D. SMITH
Counsel of Record
Assistant Attorney General
2115 State Capitol
Lincoln, Nebraska 68509-8920
Tel. (402) 471-2682

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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OPINION BELOW

State v. Iromuanya, 272 Neb. 178, 719 N.W.2d 263 (2006).

There is a relevant unpublished trial court order explaining the trial court's reasons for the reception in evidence of the testimony of Ellen Cooper, the mother of the victim Jenna Cooper. The trial court's order is found at Appendix D of the Petition for a Writ of Certiorari ("Petition"). (App. 61a-63a) The trial court's order provided a rationale that was based on state evidence and state procedural rules in the absence of any constitutional objections by Iromuanya to the reception of the testimony. The Nebraska Supreme Court's opinion discusses the Nebraska Supreme Court's review of the trial court's order.

STATEMENT OF THE CASE

I. The crimes

The petitioner Lucky I. Iromuanya ("Iromuanya") was convicted of four crimes after a jury trial. Iromuanya was convicted of second degree murder for killing the victim Jenna Cooper, attempted second degree murder for shooting the victim Nolan Jenkins, and two counts of use of a weapon for using a gun to commit a felony in connection with the murder of Cooper and attempted murder of Jenkins.

II. The facts

The facts summarized in the Nebraska Supreme Court's opinion accurately summarize the trial record. Iromuanya's Petition does not accurately summarize the

trial record. Iromuanya's Petition presents an inaccurate summary of the trial to promote baseless claims of prejudice and denial of a fair trial.

Iromuanya's Petition contains numerous citations to newspaper articles, rather than the trial record, as supporting authority. The jury's verdict was based on the evidence received during the trial as reflected by the trial record. The jury's verdict was not based on newspaper articles or other irrelevant matters outside the record.

Iromuanya's Petition also contains misstatements of fact when purporting to cite to the trial record. For example, Iromuanya's Petition, at page 3, described the victim Jenkins as a "large, drunken, white male." Iromuanya's Petition, at footnote 5, provides a trial record citation where Jenkins purportedly testified to consuming a case of beer. The trial record actually reflects that Jenkins actually testified to drinking half the quantity of beer stated in Iromuanya's Petition, that Jenkins wasn't intoxicated, and that Jenkins believed himself to be within the legal limit to drive a car. (Trial BOE2109:12-2110:2) As far as the size of Jenkins, he was 5' 11½" tall and weighed 180 pounds. (2117:6-9) Iromuanya was approximately the same size. (1549:6-9; 1519:19-20) Iromuanya had a gun. Jenkins did not.

Iromuanya's Petition, at page 4, cites a newspaper article, rather than the trial record, to support his claim that he felt threatened by Jenkins. The evidentiary portion of the trial record consists of approximately 1,700 pages. Iromuanya's claim of fear is refuted both by the Nebraska Supreme Court affirming the trial court's denial of a self-defense jury instruction and by Iromuanya's own videotaped statement and separate written statement to

the police that were received in evidence. (Trial exhibits 126, 127 and 137) The Nebraska Supreme Court stated, "There is no evidence in the record to support a reasonable and good faith belief that Iromuanya was threatened with death or serious bodily harm at the time he fired the handgun." Iromuanya shot Jenkins after Jenkins had his hand out to apologize to Iromuanya. Iromuanya's written statement to the police acknowledged, before shooting Jenkins, that he had been told, "don't worry he [Jenkins] just wants to apologize." (Trial exhibit 137)

Iromuanya's Petition makes newspaper citation references, not trial record citations, to support claims of activities by white supremacist groups. Iromuanya made no claims of error on appeal related to any such groups or activities or any effect on the jury that convicted Iromuanya.

Trial witness Carrington Hartley was an invited guest at the party where the shooting occurred. Hartley was also a black male from Jamaica. After Harley observed an initial scuffle between Iromuanya and Jenkins, Hartley testified that his initial thought was that Iromuanya might, as a minority person, be feeling threatened. Hartley's perception was that since Hartley was also a minority person, Hartley could convince Iromuanya, "[T]hat I know these people and I am a minority as well, and I am speaking to him and comfort him, I wanted him to know that nobody would be messing with him, that he would be fine and he would calm down." (1476:22-1477:6)

Hartley's perception that he, as a fellow minority, could help calm Iromuanya was soon eliminated by reality. (1569:1-7) Hartley testified as follows:

> Q ... – I guess you told us first about your thought process after you broke up this initial scuffle. The defendant didn't know people there?
>
> A Yes.
>
> Q He was one of the few minorities?
>
> A Yes.
>
> Q Had it entered your mind that maybe you could – if he was afraid that you could help?
>
> A Yes.
>
> Q Did it appear to you, after you came up to the defendant and closer, that he was afraid and scared?
>
> A Not at all.
>
> Q How did it appear to you?
>
> A He's obvious – He's riled up. I mean I would parallel his behavior to a fighting cock. He was all riled up, he was ready to go basically.

(1568:24-1569:14)

The references in Iromuanya's Petition purporting to describe trial spectators wearing memorial buttons is also not supported by the trial record. The Nebraska Supreme Court's opinion contains a discussion of Iromuanya's assignment of error on this issue after prefacing its discussion by stating in relevant part, "the record in this case gives us little information on which to evaluate Iromuanya's assigned error."

The trial record reflects that the testimony of Ellen Cooper, the mother of the victim Jenna Cooper, was limited in detail and in length. The total testimony of

Ellen Cooper encompasses less than 15 pages of the approximate 1,700 pages of trial record testimony. (486:5-501:25)

Ellen Cooper testified, without objection, that she last spoke with Jenna on the phone at approximately 8:30 p.m. on the night of the shooting. (495:15-20) Ellen Cooper testified, again without objection, that early the next morning she received a phone call informing her of the shooting. (496:1-497:4) She testified, without objection, that upon arriving at the hospital, she received a briefing on Jenna's condition before being taken back to Jenna. (497:10-498:10; 499:4-15)

Ellen Cooper concluded her testimony by being asked to identify Jenna from a photo taken of Jenna in the hospital. Iromuanya's counsel objected to the question only on the grounds of Nebraska Evidence Rule 403, not on any constitutional grounds. (501:17-22) After the trial court overruled the objection, Ellen Cooper cried and stated, "That's my baby girl Jenna." (501:17-25; E19) The question requesting Ellen Cooper to identify Jenna by the photo, Iromuanya's state evidence rule objection, and Ellen Cooper's verbal answer and emotional response of crying when answering are the primary portion of the trial record related to the "Question Presented" by Iromuanya's Petition.

The photo by which Ellen Cooper identified her daughter was one of the photographs referred to by Dr. Burton, the prior witness, when describing his treatment of Jenna at the hospital after the shooting. (E19; 440:6-22) No further questions were asked of Ellen Cooper after she identified Jenna. Iromuanya did not move for a mistrial.

REASONS FOR DENYING THE WRIT

I. Rule 10 considerations

A. The Nebraska Supreme Court did not decide a federal question.

The Nebraska Supreme Court's opinion did not decide an important federal question. The Nebraska Supreme Court disposed of Iromuanya's claim concerning Ellen Cooper's photo identification of her deceased daughter on purely state law grounds. This is because Iromuanya raised no federal constitutional question in his state court appeal.

Iromuanya made no constitutional objection to Ellen Cooper's trial testimony or to her reaction upon identifying her daughter by photo at the conclusion of her testimony. Iromuanya's only objection to the testimony was Nebraska Evidence Rule 403, which objection was overruled by the trial court. Iromuanya's claim of error and supporting argument on appeal were based on state law. On appeal, Iromuanya argued for the Nebraska Supreme Court to adopt a bright-line state evidence rule prohibiting a family member of the deceased from identifying a homicide victim unless there are independent reasons to permit such testimony. Iromuanya's other argument on appeal was that the trial court had erred by overruling his Nebraska Evidence Rule 403 objection.

The Nebraska Supreme Court's opinion rejected Iromuanya's arguments by (1) declining to adopt a bright-line rule against family member identification of a homicide victim, and (2) concluding that the trial court did not abuse its discretion in receiving Ellen Cooper's identification testimony in accordance with state evidence rules. Although not raised by Iromuanya's Question Presented in his Petition, the Nebraska Supreme Court did find that

the trial court erred by receiving other testimony by Ellen Cooper concerning her daughter's hobbies, interests, and aspirations. The Nebraska Supreme Court concluded that this latter evidentiary error was harmless.

B. The Nebraska Supreme Court did not create a conflict involving an important federal question.

Because no federal constitutional question was reached by the Nebraska Supreme Court in resolving Iromuanya's claim concerning family member identification of the victim and because the only law applied in doing so was Nebraska evidence and procedural law, Nebraska Supreme Court's decision cannot create a conflict with the decisions of this Court, the highest court of another state, or a federal court of appeals on a matter of federal constitutional law.

C. No compelling reasons.

The Petition does not involve a significant question of federal law or the federal constitution. Iromuanya's Petition appears to advocate the adoption of a bright-line constitutional evidence rule to exclude the criminal trial testimony of a class of otherwise competent witnesses because of concerns that members of the class might not always testify in a unemotional, detached manner. There are no compelling reasons to grant the Petition.

II. Rule 14(1)(g)(i) considerations

As summarized in the previous section concerning Rule 10 considerations, the record of the trial, state court

appeal, and Nebraska Supreme Court opinion do not reflect that the federal question sought to be reviewed was raised in either the trial court or in the appeal to the Nebraska Supreme Court. Page 10 of Iromuanya's Petition states that Iromuanya "invoked Nebraska Evidence Rule 403."

Iromuanya's arguments and a review of the cases cited in his Petition reflect that state courts, when presented with state court evidence issues, have reached various conclusions for various reasons on matters of state law. The trial record is devoid of any evidence to support the conclusion that the jury's verdict was affected or influenced, at all, by any of the "additional circumstances" alluded to at page 13 of Iromuanya's Petition. The trial record also does not support the existence of the claimed "additional circumstances."

CONCLUSION

For the above reasons, the respondent opposes the petition for a writ of certiorari.

Respectfully submitted,

JON BRUNING
Nebraska Attorney General

JAMES D. SMITH
Counsel of Record
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509-8920
Tel. (402) 471-2682

Attorneys for Respondent